RESERVED

COURT NO.3

Criminal Miscellaneous Application No.186 of 2001,
(Old No.1309 of 1998)

Raj Kishore Saxena .....Applicant

Vs.

Addl.District Judge
Special Judge(Anti-Corruption)
and another .....Opposite parties.

.....

Hon. Irshad Hussain, J.

This application under section 482 of the Code of Criminal Procedure (hereinafter in short 'Code') for quashing the chargesheet dated 22.10.1997 and the proceedings of the criminal case no.14 of 1997, C.B.I. Versus Raj Kishore Saxena Pending in the Court of Additional District Judge/Special Judge, Anti-Corruption, Dehradun.

The case, in brief is that in the year 1995, the petitioner was employed as Chargeman Grade-II in the ordinance factory, Raipur, Dehradun and during the period March, 1995 to December 1995 had to travel from Dehradun to Allahabad for pairvi of cases before the Central Administrative Tribunal. There was complaint that the petitioner falsely claimed T.A. equivalent to I class railway fare although he actually traveled in second class and thereby cheated the ordinance factory to the tune of Rs.7544.00 and thus obtained pecuniary advantage for himself by corrupt and illegal means and by abuse of his official position. C.B.I. after investigation submitted chargesheet dated 22.10.1997 and the learned Special Judge on receipt

of the same took cognizance of the offence under section 420 of the I.P.C. and section 13(2) read with section 13(1)(d) of the Corruption of Prevention Act, 1988. The petitioner moved an application before the Special Judge for quashing of the proceedings on the ground that sanction to prosecute him as contemplated by section 197 of the Code had not been obtained. The argument was repelled and the learned Special Judge accepted the contention of the C.B.I. that petitioner was a retired Government servant and sanction to prosecute him was not required.

Heard learned counsel for the parties.

The only question which arises for consideration is whether any sanction is necessary to prosecute the petitioner. It is not in dispute that in the departmental proceedings the petitioner was exonerated of the charge in regard to the above misconduct on his part and learned counsel for the petitioner drew attention to the copy of the order dated 25.03.1997, Annexure-2 to bring home his point of view that criminal proceedings against him need to be quashed on this ground also. At the outset it need to be mentioned that for misconduct departmental proceedings as well as criminal proceedings may simultaneously be drawn against the Government servant and the dropping of the charge in disciplinary proceedings cannot be of any avail to the petitioner so far as the criminal are concerned.

To attract section 197 of the Code, two conditions are prescribed. The first condition is that the public servant should be removed only with the sanction of the Government and secondly, the offence by the said public servant should be committed by him while

acting or purporting to act in the discharge of his official duty. Learned counsel for the petitioner did not dispute that the petitioner could have only been removed with the sanction of the Government. The first condition is satisfied in this case. So far as the second condition is concerned, it is well settled that if official status of a public servant provide an opportunity of committing the offence of the nature of misappropriation of the fund or cheating, the same by very nature cannot be regarded as having been committed while he was acting or purporting to act in the discharge of his official duty. The test to determine is whether the alleged action which constituted an offence has reasonable and rational nexus with the official duties required to be discharged by the public servant. In this case it cannot be accepted that in the discharge of his official duty the petitioner was expected to act in the manner alleged, i.e. charging T.A. equivalent to I class railway fare although he travelled in second class while assigned to some duty as a public servant. In the case of K. Satwant Singh Vs. State of Punjab reported in A.I.R. 1960, Supreme Curt, 266, the public servant was charged for offence of cheating. The Apex court has held that offence of cheating by its very nature cannot be regarded as having been committed by public servant while acting in the discharge of his official duty. In another reported case of Shambhu Nath Mishra V. State of U.P., 1997, Supreme Court, 2102, the Apex court had held that fabrication of record and misappropriation of public fund by public servant is not his official duty and sanction for his prosecution for alleged offence is not necessary. The Apex court in the State of Kerala vs. Padmanabhan Nair reported in A.I.R. 1999, Supreme Court, 2405 has laid down that

it cannot be said that for offences under section 406 and 409 read with section 120B of I.P.C. sanction under section 197 of the Code is a condition precedent for launching the prosecution. In the light of these reported decisions it is quite obvious that the petitioner while submitting false T.A. bills and drawing money by cheating cannot be said to have acted in the discharge of his official duty and sanction under section 197 of the Code is not a condition precedent for launching the prosecution against him by the C.B.I.

On behalf of the petitioner learned counsel placed reliance on the decision of the Apex court in R.Balakrishna Pillai vs. State of Kerala and another reported in A.I.R. 1996, Supreme Court, 901 to support the contention that sanction is necessary even if the public servant ceases to hold his office on the date of taking cognizance of offence. Petitioner has retired from the service before the sanction was taken against him. Since the sanction was not required for launching the prosecution and taking cognizance as stated above, the reported decision cannot be of any help to the cause of the petitioner.

For the above reasons and discussions and the petition being without merit the chargesheet in question cannot be quashed. The petition is therefore, dismissed. Stay order is vacated.

(Irshad Hussain, J.)

13.03.2002/B.